

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-20129

-v-

SCOTT WILLIAM SUTHERLAND, et al.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-20066

-v-

JEFF GARVIN SMITH, et al.,

Defendants.

STATUS CONFERENCE

BEFORE THE HONORABLE ROBERT H. CLELAND  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Thursday, June 20, 2013

APPEARANCES:

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Proceedings reported by electronic stenography.  
Transcript produced by computer-aided transcription.

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E X H I B I T S

(None Offered.)

1 Detroit, Michigan

2 June 20, 2013

3 3:07 p.m.

4 \* \* \*

5 THE COURT: Good afternoon. Please be seated.

6 THE CLERK: Ms. Greenwood is on the phone.

7 THE COURT: Oh, okay. Good. Ms. Greenwood, good  
8 afternoon. Can you hear us?

9 MS. GREENWOOD: Yes. Good afternoon.

10 THE COURT: Very good. We're on the record. We're in  
11 court on a semi-informal setting here, conference table  
12 setting. And I have for, let's see, for Group 1, Mr. Sabbota  
13 is here.

14 MR. SABBOTA: Jerome Sabbota on behalf of Group 1.

15 THE COURT: And Mr. Satawa?

16 MR. SABBOTA: Not here.

17 THE COURT: Not here. Mr. Satawa, not Mr. Sabbota.

18 MR. SABBOTA: Sabbota is here. Satawa is not.

19 THE COURT: Okay. Thank you.

20 For Group 2, Mr. Kraizman?

21 MS. STOUT: No. I'm here.

22 THE COURT: Ms. Stout.

23 MS. STOUT: Group 2, Kimberly Stout.

24 THE COURT: I have highlighted names that are not  
25 here.

1 Group 3, Ms. Raben?

2 MS. RABEN: Here.

3 THE COURT: Group 4, Mr. Swor?

4 MR. SWOR: Yes. And Mr. Gleeson.

5 THE COURT: And Mr. Gleeson. And a few others are  
6 here as well.

7 Ms. Mohsin is here for the Government. Anybody else?  
8 Just you?

9 MS. MOHSIN: Just me, your Honor.

10 THE COURT: We conferred just a little while ago about  
11 the state of affairs with discovery. And I'm presuming that,  
12 since I haven't heard any news of difficulties or problems in  
13 the meanwhile, I'm presuming, and hopefully so, that things are  
14 proceeding as you planned.

15 Ms. Greenwood, as far as you're concerned, is that, is  
16 that the case? As far as you are aware, at least?

17 MS. GREENWOOD: Well, I actually have a few issues to  
18 bring up, your Honor. May I start or?

19 THE COURT: Yes. Please do. Please do.

20 MS. GREENWOOD: Okay. Well, there were a few separate  
21 issues. First of all, last week, we had discussed the issues  
22 with the audio files. And in discussions with the Government,  
23 I had been awaiting a flash drive that would include a set of  
24 audio files. And my understanding was that it would be a set  
25 of, a complete set of audio files because of the, the problems

1 we had been having with the productions 1 and 2 audio files.

2 I did receive a production on Tuesday afternoon and  
3 have been reviewing that drive that contains over 14,000 audio  
4 files. I noticed that there were a selection of files that  
5 could not be accessed or played. And I make that distinction  
6 because some of the files can actually be opened, but when  
7 opened, the sound byte is a static sound. It's actually not a  
8 conversation of any kind. And then there are other files that  
9 are not able to be opened or played at all. And there were  
10 also some files that we have received in the first two  
11 productions that were not, as far as I could tell, not on the  
12 latest production. And my analysis was by virtue of the file  
13 name of the file.

14 So I took quite a bit of time to look at this. I have  
15 discussed this with the Government this morning. I notified  
16 them of, of my concerns last night. And I, I believe, and in  
17 our discussion, we discussed that it's likely that the files on  
18 productions 1 and 2 that I received that are not on the new  
19 drive are the playable versions of the files that are on the  
20 new drive that cannot be accessed. There are, your Honor,  
21 there are over 1,000 files on the new drive that I just  
22 received that cannot be played.

23 So I've asked the Government to confirm the number of  
24 these playable files that were on the first two productions so  
25 I can confirm that I'm, in fact, in receipt of the correct

1 number of those files and that they correspond with the number  
2 of files on the newest production that cannot be played.

3 But I know I had represented that as soon as I  
4 received this new production, I'll duplicate it and distribute  
5 it to counsel. It's just not, at least as far as I can tell  
6 right now, not going to be as quick a process as I had  
7 anticipated.

8 THE COURT: What do you think needs to be done with  
9 the assistance of the Government counsel now?

10 MS. GREENWOOD: I'm sorry. I'm sorry. I didn't hear  
11 -- hear you.

12 THE COURT: Is this better?

13 MS. GREENWOOD: Yes.

14 THE COURT: What do you suggest should be done with  
15 the assistance of Government counsel now, in view of the state  
16 of affairs on audio files, recently received?

17 MS. GREENWOOD: Well, I anticipated receiving a drive  
18 that would be a complete production of all audio files,  
19 including files that I've received in the first two  
20 productions, because there was a question of, you know, is the  
21 production complete. And the numbers of the files I received  
22 in productions 1 and 2 differed. So ideally, I would like to  
23 have in my possession the drive that includes the complete set  
24 of audio files.

25 Now, if I, indeed, have in my possession the three

1 productions a copy of every audio file I should be in  
2 possession of, then theoretically, I could consolidate the  
3 groups of, of files and determine which are duplicates and  
4 remove those, remove the files that aren't playable. But as  
5 everyone can understand, that would take some time. And it  
6 would prevent me from being able to provide counsel with all  
7 these materials in, in a quick fashion.

8           So if, if it's not possible for me to get a drive that  
9 I expected to get, which is the complete set of audio files,  
10 then I would like to know a confirmation of the number of, of  
11 the playable files that they have a special extension, that's  
12 why they are very easily identifiable in productions 1 and 2.  
13 They have the letters C-O-N-V in the file name.

14           If the Government can confirm that the number of these  
15 files is indeed the number that I have, then I can, I can work  
16 with that.

17           THE COURT: So, Ms. Mohsin, would you weigh in on  
18 this? And use the microphone so Ms. Greenwood can hear you,  
19 please.

20           MS. MOHSIN: First of all, your Honor, I did have a  
21 conversation with Ms. Greenwood just a few hours ago.

22           I want the record to be clear that the latest thumb  
23 drive is a complete production. I don't want there to be any  
24 confusion on anyone's part that we haven't provided all of the  
25 calls that were on the original optical disk.



1           The problem that I've been alerted to by Ms. Greenwood  
2 is that on one of the three categories of calls, which is  
3 specifically the push-to-talk calls on the Vern Rich wiretap,  
4 that comprises a small number of calls, but nevertheless a  
5 category of calls. She is unable to open those audio files for  
6 whatever reason. And in a prior production, the same audio  
7 files contained a C-O-N-V after the name.

8           So all of the calls have been provided. Some are not  
9 opening. I'm not sure why they are not opening. I'm trying to  
10 get to the bottom of it. But I don't want there to be any  
11 confusion that we have not provided all of the calls. In fact,  
12 we've provided the calls now on three occasions based, first,  
13 on what I had in my possession in my office; second, based on  
14 what the agent's optical disk had, concerns that Ms. Greenwood  
15 had raised about missing calls. I don't even know which calls  
16 were missing at what point or if, you know, how many, if it was  
17 one or two, or if it was a more, you know, a larger issue.

18           And in the interests of trying to resolve this problem  
19 and resolve it quickly, we unsealed the original optical disks  
20 and copied them. And that's what we provided as quickly as  
21 possible. We did a thorough scrub. People in my office took  
22 several days of, of looking through all of the audio files to  
23 make sure that they were there. So we feel confident that this  
24 thumb drive that we've turned over to Ms. Greenwood is  
25 complete.

1           What we indicated to her on the phone earlier today is  
2 if the C-O-N-V suffix works on the previous production, and for  
3 some reason, it's not working for you now when you open up that  
4 file, then take the second production and just copy that for  
5 defense counsel, because it seems to be functioning. It's the  
6 same call, but one doesn't function and the other one has the  
7 C-O-N-V at the end of it.

8           We're trying to get to the bottom of this, but I was  
9 alerted to it just a few hours ago, and I'm not sure what the  
10 problem is.

11           THE COURT: Well, it sounds like it's to be continued,  
12 Ms. Greenwood. But it sounds as though Ms. Mohsin, for the  
13 Government, is here saying that you actually have those calls  
14 twice, one set apparently that does open, and the most recent  
15 set, that for some reason, does not.

16           And I think that you would be -- it would be wise then  
17 simply to direct you to continue to work with Government  
18 counsel, communicate with counsel in an effort to make sure  
19 that you have playable files assembled on one drive, which can  
20 be then distributed in the, in the very near future. So other  
21 than that, I don't know that there's anything else that I  
22 should be doing to supervise that.

23           Is there anything that you can think of, Ms.  
24 Greenwood, that the Court ought to be doing or declaring or  
25 suggesting?

1 MS. GREENWOOD: I, I don't think so, your Honor. I  
2 agree with you, and I'll continue to work with the Government.  
3 It's just a little bit frustrating. And, and as I'm constantly  
4 thinking about containing costs, you know, this will be the  
5 third time that we've tried to assess the situation with the  
6 audio files. And it's, it's just a little bit frustrating.

7 These are, these are productions that have to be sent  
8 on flash drives, typically, because there are so many files and  
9 flash drives are expensive. And every time we make a shipment  
10 to the defense team, because there are so many of them, and we  
11 send them by secured FedEx format, it's hundreds of dollars.  
12 So I definitely want to be sure that when we send these out  
13 this time, that everything is, is complete.

14 Beyond the audio files, though, I also wanted to  
15 mention that I receive four additional pieces of discovery.  
16 This is new discovery that we hadn't received before. And I  
17 had been under the impression that the discovery production was  
18 complete. And this was also something that I discussed with  
19 Ms. Mohsin and Mr. Straus this morning.

20 There are three audio files on these disks and one  
21 video which, frankly, compared to the rest of the volume here  
22 in this case, is not that significant. But what is significant  
23 from my perspective is two things:

24 One, the iPads were not configured to play video. And  
25 they weren't actually configured to play the type of audio

1 files in the format that these particular audio files were  
2 produced. So one additional thing that I'm going to have to do  
3 is to backtrack a little bit with the vendor, whom I spoke with  
4 this morning, about these new files and how to incorporate them  
5 into the iPad configuration.

6 Beyond that, which also, again thinking about cost  
7 containment, this is going to cost money. But beyond that, I  
8 had specifically discussed all the applications that would be  
9 on the iPad devices with each of the facilities, with each  
10 person at the facility to see what their response was.

11 And one of the facilities in particular has a policy  
12 that all applications that aren't necessary for the review of  
13 discovery be disabled or removed. So that's, in fact, what we  
14 did, your Honor. We had removed the video play capacity on the  
15 iPads. So that's now something that we're going to have to add  
16 to the iPad devices. And that's going to take time. And  
17 that's going to take some money.

18 Now, I did speak with the vendor this morning. The  
19 vendor has, you know, tried to make this, this process as easy  
20 as possible. They are very eager to help. I'm very encouraged  
21 that we'll make this work. But I just wanted to alert the  
22 Court that this may have been -- it's certainly not -- it was,  
23 it was something that I did not anticipate having to provide  
24 on, on the iPad devices.

25 THE COURT: Okay. Anything else, Ms. Greenwood?

1 MS. GREENWOOD: I also learned that there's more  
2 discovery on its way. And maybe I'll leave it to the  
3 Government to discuss that. But it would definitely help me,  
4 and again, I indicated this to the Government, in terms of  
5 containing costs in this case to have an understanding of  
6 what's coming as soon as that's possible, so I can anticipate  
7 how to contain costs further.

8 THE COURT: Ms. Mohsin, do you think you have  
9 assembled all of the various investigative reports, at least  
10 made an effort to do that from the, what is it, 20 or 30  
11 different law enforcement agencies implicated in the case?

12 MS. MOHSIN: Yes and no, your Honor. We have made an  
13 effort. We've turned over everything that we had in our  
14 possession. But as I'm sure the Court can appreciate, there  
15 are going to be categories of things that we do not have in our  
16 possession that we are actively trying to determine if these  
17 things exist, where they are, and to obtain them so that we can  
18 produce them. So we're very diligent in our ongoing  
19 obligation.

20 The disks that I provided to Ms. Greenwood with the  
21 latest production had just come into my possession, so I  
22 immediately had them copied and turned over so that they could  
23 be included.

24 I think though, your Honor, it's worth pointing out, I  
25 pointed out to Ms. Greenwood when we spoke earlier today, that

1 there are going to be things that we receive that I don't know,  
2 either that they currently exist or where they are located, et  
3 cetera, that as I receive them and want to turn them over, it  
4 may not be possible to put them all on the iPad. And to some  
5 extent, maybe, you know, there should be a period of time that  
6 perhaps they can be just given to defense counsel on a disk,  
7 and maybe just single copies made for the purpose of review.

8 But I can't imagine that we can keep holding up the  
9 iPads until all the rolling sort of pieces of discovery come  
10 in, because that's inevitable in any case. You're going to  
11 have people telling you, witnesses or agencies saying, hey, I  
12 found this and you should have this, that sort of thing.

13 THE COURT: Ms. Greenwood, yeah -- that, well, I think  
14 that's a fundamentally sensible observation. There may be  
15 some, like if there's one video file in the whole collection of  
16 15,000 pages or items of Rule 16 materials, I don't think it  
17 makes sense to do anything other than provide that one video to  
18 the, the relevant defendant's counsel, and let them deal with  
19 it perhaps on consultation with client and so forth. That's  
20 going to happen from time to time.

21 (Mr. Satawa present, 3:23 p.m.)

22 THE COURT: Let me ask you this, Ms. Greenwood.

23 On the assumption that there are going to be periodic  
24 -- periodically reports and other documentation that may  
25 essentially dribble in over time, would it be more productive,

1 from your standpoint, to receive those things on an immediate  
2 basis or perhaps on a monthly basis, collecting whatever may  
3 come in, in the month of June and turning it over on or about  
4 the 1st of July, for example? The alternative being maybe you  
5 would get three submissions during the month of June, ten days  
6 apart, as these things are received.

7 Which would be a more productive way of doing  
8 business, as far as you're concerned?

9 MS. GREENWOOD: Well, from my perspective, and  
10 frankly, I think I would defer to counsel to see what they  
11 would prefer. But from my perspective, I think that as a  
12 defense attorney myself, I would like to get my hands on the  
13 discovery as soon as I can. So I would like to provide that to  
14 the defense as quickly as is able to be produced.

15 As far as loading everything up onto the iPads, I did  
16 consider the prospect of additional discovery productions in my  
17 initial assessment of cost for this process. And we will  
18 certainly have to think of the most ideal way to load new  
19 discovery when it's, when it's received.

20 But if, if the wave of discovery is -- my impression,  
21 your Honor, was that the discovery production was complete. So  
22 now that I know there may be some more coming, I really hadn't  
23 thought through how that might work best. But I think I would  
24 like to receive the discovery as soon as the Government is able  
25 to produce it so I may provide it to counsel.

1 THE COURT: Okay.

2 MS. GREENWOOD: And then --

3 THE COURT: That's fine.

4 MS. GREENWOOD: And then once we see what it is and  
5 how much it is, we can determine when it makes sense to send  
6 the iPads back to the vendor.

7 I did, just very quickly, I did speak with the vendor  
8 early on about this prospect, because of course we know that  
9 discovery productions are often on a rolling basis. And  
10 they've assured me that they'll do whatever they can to  
11 expedite the, the transfer of discovery to the iPads when the  
12 iPads are all sent back.

13 So I'm pretty confident we can come up with a good  
14 and, and expedited solution to that. It's just hard to know  
15 the answer to your question without knowing what, what types of  
16 data we're, we're talking about.

17 THE COURT: Well, I hear you saying that you'd rather  
18 have it transmitted as it is received by the Government. And  
19 that's fine. I think that let's just make that decision, and  
20 let's set that as the protocol and that's finished. There we  
21 have it. Thank you.

22 I would observe in connection with that, that I  
23 commonly see in preparation for significant trials,  
24 significantly large criminal indictments, that Rule 16 material  
25 is continually discovered, especially where there are multiple



1 agencies involved. And I think every attorney that's tried a  
2 couple of cases has had the same experience. And the attorneys  
3 we have here have tried a few cases. So I don't think it's  
4 going to be any surprise to anybody.

5 So receive it or send it on, reasonably  
6 contemporaneously when it's in the hands of the Government.  
7 That will be satisfactory. Let's just do that.

8 Right, Ms. Mohsin?

9 MS. MOHSIN: We will certainly do that, your Honor.

10 THE COURT: Thank you.

11 Let's move to another topic, and that is in terms of  
12 scheduling, generally. I think that we can fall back, as far  
13 as I'm concerned, to approximately a 60-day status conference  
14 schedule here, which would have us together again some time in  
15 August. We'll determine a date. My case manager actually will  
16 determine the date for us, but late August to determine what's  
17 going on here.

18 And let me suggest further something new and  
19 different: Setting a trial date. Let me throw this on the  
20 table and see how Group 1 reacts.

21 Pick the jury on April 15th, 2014, Group 1, whoever is  
22 left. What do you think, Group 1 or 2 or 3?

23 MR. SABBOTA: Well, the answer would depend on how  
24 soon we get all the discovery.

25 THE COURT: You're going to get it -- well, you've got

1 -- you're within a very short time of getting everything,  
2 everything of significance that you're going to get now. So  
3 let's just operate on the assumption that you have, or will  
4 have within a very short time whatever there is to be had that  
5 is, that is of any significance to your client.

6 Operating on that assumption, what do you think?

7 MR. SABBOTA: There is a trial that is set that I'm  
8 involved in --

9 THE COURT: April.

10 MR. SABBOTA: -- with Judge Goldsmith's court.

11 THE COURT: Well, everybody is going to have  
12 conflicts. I will not be able to satisfy everyone, that's for  
13 sure. By the way, use the microphone if you would, please.

14 MR. SABBOTA: Oh, I'm sorry. I have no problem with  
15 April 15th.

16 THE COURT: Okay. And that would mean, I would imply  
17 with that a final pretrial conference, change of plea, final  
18 change of plea opportunity. My case manager suggests February  
19 11th, which is March, April, is about two months before trial.  
20 There would be motion deadline, probably a month before that,  
21 January, roughly early January. So we've got to get this ball  
22 rolling with somebody. And I think Group 1 sounds pretty good  
23 to me. I don't know what differentiates 1, 2, 3 or 4 offhand.  
24 But if anybody else has any alternative suggestions or would  
25 like to go first. Mr. Swor perhaps?

1 MR. SWOR: No. When, when the Court established these  
2 four groups, we were told that the four groups would not --

3 THE COURT: Let's try the microphone, because Ms.  
4 Greenwood is really going to be unable to hear anything unless  
5 we use the microphone.

6 MR. SWOR: This has nothing to do with her anyway.

7 THE COURT: Well, right. But in fairness to her.

8 MR. SWOR: When the Court established four groups, the  
9 Court said the four groups were not necessarily going to be the  
10 trial groups.

11 THE COURT: Okay.

12 MR. SWOR: So I think we first need to determine what  
13 the trial groups are going to be.

14 THE COURT: Not necessarily. But now that we have  
15 them grouped together, I guess I would ask in terms of trial,  
16 why not?

17 And perhaps Ms. Mohsin needs to weigh in on this. The  
18 Government may have interests of economy of production, for  
19 example, commonality of witnesses, things of that nature that  
20 might make it inadvisable to try whatever the remainder may be  
21 of Group 1 by next year together, or may think differently  
22 about the suggestion -- suggested categorizations. Although,  
23 it was initially I think the Government's suggestion that these  
24 be categorized in, in this way. As a matter of fact, I think I  
25 have the order that reflects that in my hands.

1           So, Ms. Mohsin, what's your offhand impression about  
2 grouping for purposes of trial?

3           MS. MOHSIN: Well, I do recall the Court did make  
4 that, that record that these are not necessarily for trial.  
5 However, when we did try and fashion a group 1, 2 and 3, 4, we  
6 were trying at least preliminarily to keep that sort of in  
7 mind.

8           For instance, Group 1 is comprised of both defendants  
9 that are in both indictments. So to some extent, that makes  
10 sense from our point of view, because they have -- they are  
11 charged in both indictments. And that's why they were included  
12 in the Group 1, from our point of view.

13           The remaining defendants, loosely, we sort of tried to  
14 put them with similar, similar thoughts in mind. But I, I can  
15 say that Group 1, certainly we were of the mind that because  
16 they are charged in two indictments, it made sense for them to  
17 be in Group 1 together.

18           THE COURT: And then there are some sorts of  
19 commonalities amongst Group 2, amongst the people in Group 3,  
20 and amongst the people in Group 4 that, at least preliminarily,  
21 you thought might --

22           MS. MOHSIN: Yes.

23           THE COURT: -- be sensible to bind them together in  
24 this way?

25           MS. MOHSIN: Yes, but not as tightly as Group 1. In

1 other words, Group 1 really is because of those two cases, and  
2 we tried to do the same in Groups 2, 3 and 4, based on what we  
3 thought might be similar --

4 THE COURT: Perhaps it might be productive for me to  
5 direct Government counsel to proffer a memorandum, similar to  
6 this document No. 455 that is a memorandum regarding defendant  
7 groupings. This is from August of 2012. And based upon this,  
8 we established the pretrial groupings.

9 But perhaps it would be time and, and be productive to  
10 engage in this, to have a reassessment of the, of the groupings  
11 and to create a different document in a different order that  
12 would bind, with defense counsel's input certainly, but that  
13 would eventually produce an order that I could enter that would  
14 identify, at a minimum, that would identify an initial group  
15 for whom we could target a trial date and leave the rest of  
16 them alone. And I would think that that would be a group that  
17 would approximate ten in number.

18 And I'm thinking that you might be able to proffer  
19 those suggestions within about maybe two or three weeks. And  
20 give counsel for the defense an opportunity to react and  
21 discuss and so forth and confirm, I hope. And then I could  
22 enter an order that would identify a certain number of people  
23 and stick with this April, I think we should, at least, stick  
24 with this April of 2014 target for a trial with a motion  
25 deadline in advance of that or final pretrial conference a

1 little bit down the line.

2 What would you think of that idea, Ms. Mohsin?

3 MS. MOHSIN: We can certainly do that, your Honor. I  
4 feel fairly comfortable, though, that Group 1 as it's currently  
5 listed would be that first group.

6 THE COURT: Is that right?

7 MS. MOHSIN: Yeah. Because Group 1, they are indicted  
8 in both cases. And so the proofs for the second indictment  
9 would overlap the proofs in the first -- the proofs of first  
10 indictment would overlap the second. In other words, they are  
11 relevant to one another. So we did group those because of that  
12 fact and because they had similar issues.

13 I could, I could feel comfortable telling the Court  
14 that Group 1 is a group that we would want to try as a trial  
15 group. With the rest of them, if the Court wanted, you know,  
16 that proffer I could make that now. Obviously, if counsel want  
17 to weigh in, and the Court would like that.

18 THE COURT: I have no reason in particular to suggest  
19 Group 1 for the initial trial group as opposed to Group 2, 3 or  
20 4.

21 MS. MOHSIN: Okay.

22 THE COURT: I'm open to suggestion, counsels' desires  
23 or agreement or --

24 MS. STOUT: Your Honor, if I --

25 THE COURT: -- motion practice or whatever may be the

1 case.

2 Ms. Stout?

3 MS. STOUT: I'm so sorry to interrupt. My client is  
4 now in Midland County jail. Mine is Defendant No. 8, Vincent  
5 Witort. And he has repeatedly reminded me to express his right  
6 to a speedy trial. So if the Government wants to consider  
7 those issues when they proffer their memo. He's in Group 2.

8 THE COURT: Everybody, everybody deserves a speedy  
9 trial.

10 MS. STOUT: Of course. But he is incarcerated and  
11 he's in Group 2. Just for the record, your Honor. Thank you,  
12 very much.

13 THE COURT: Thank you.

14 Mr. Weiss is attending as well. Hello.

15 MR. WEISS: Your Honor, my client is in Group 1. He  
16 resides in Alabama. He is not detained. But because the  
17 mechanism has not been effectuated for him to get discovery, he  
18 knows very little about the case and he did not have the funds  
19 to come up and confer with me. And in speaking with Bob Ranz,  
20 there were not funds for me to go and confer with him.

21 So until such time as all of the iPads or whatever is  
22 going to transpire, it makes it more problematic for  
23 individuals such as him to assist counsel in preparing for  
24 trial. And it is my understanding that there are a number of  
25 individuals in Group 1 that are detained. So I would imagine

1 their access to materials have been equally limited.

2 So I'm asking the Court, one, to revisit the setting  
3 of the trial date. And two, given the fact that I would assume  
4 that non-detained defendants had greater access to their  
5 attorneys and the materials at this juncture, that perhaps a  
6 group other than Group 1 be the first to go and simply so that  
7 there's additional time for the defendants that are hindered by  
8 their status and location of assisting counsel in preparing for  
9 trial.

10 THE COURT: That's almost exactly the opposite of the  
11 argument Ms. Stout produced or presented in which her  
12 incarcerated defendant wants a speedier trial, rather than a  
13 more delayed trial.

14 MR. WEISS: I can't speak for her, but she's in a  
15 different group as well.

16 THE COURT: Okay. But she's got, you and she both --  
17 so but your client has a cohort of incarcerated defendants who,  
18 on the one hand, want a speedy trial, but on the other hand,  
19 have a difficulty in reviewing discovery. So we've got  
20 considerations that go in two opposite directions in that  
21 regard. But I appreciate your comments, and they are worth,  
22 you know, they are worth listening to.

23 MR. WEISS: Thank you, Judge.

24 THE COURT: All right. So you recommend Group 1 as a  
25 trial group, Ms. Mohsin, right?



1 MS. MOHSIN: I would like to take advantage of the  
2 week or two to, to give it further consideration.

3 THE COURT: And consultation, I would suggest.

4 MS. MOHSIN: Yes. And, you know, so that everyone can  
5 be heard and we can make a, a good decision.

6 THE COURT: And I'm operating here also on the  
7 assumption that with the assistance of Ms. Greenwood, that  
8 discovery material that Mr. Sabbota was talking about will be  
9 produced and will be accessible and will be able to go through.  
10 We've got 10 months now, between now and a proposed  
11 hypothetical hoped-for trial date, less than that for motion  
12 practice. But it seems to me that we need to set some sort of  
13 benchmarks here, even if, even if we need to move, move the  
14 mark as, as the time approaches. You know, that can be done.  
15 But leaving it in a, in a sort of --

16 MR. SABBOTA: Limbo.

17 THE COURT: Well, limbo, yeah. Embryonic or an  
18 undefined condition is somehow unsatisfying.

19 Mr. Satawa?

20 MR. SATAWA: I apologize for my lateness, your Honor,  
21 first of all.

22 Your Honor, if we are going to get to the point where  
23 we're discussing dates, may the Court or counsel inquire of the  
24 Government as to, and again, nothing will be held, held -- they  
25 will not be held to this, but if counsel could have an idea as

1 to the approximate length of the Government's case-in-chief if  
2 Group 1 were to be tried together?

3 THE COURT: That's a perfect topic for  
4 counsel-to-counsel consultation.

5 MR. SATAWA: Yes, your Honor.

6 THE COURT: Absolutely. I think you ought to talk  
7 about that. Good idea. And so over the next couple of weeks,  
8 14 days, let's aim at talking about that.

9 And, Ms. Mohsin, if you would be so kind as to provide  
10 the Court and everybody else with a memorandum, the  
11 Government's suggestion of a first grouping of defendants to be  
12 set for trial, operating on the assumption that I'm looking at  
13 the middle of April for jury selection. You might even include  
14 in that the product of your discussion, Mr. Satawa just  
15 mentioned in terms of estimated complexity of the case and  
16 length of, expected length of presentation of Government  
17 proofs. That would be, I'm sure, very helpful.

18 And to the extent that you are able to communicate  
19 here and confer with liaison counsel, in Group 1, 2, 3 and 4,  
20 I'm sure they'll assist you as well.

21 And we'll get that, so then the next event then on the  
22 record would be a memorandum of suggestion of trial grouping,  
23 initial trial grouping, with some commentary about the expected  
24 complexity of the Government's case-in-chief. And I'll allow a  
25 reasonable period of time for any additional commentary that

1 counsel might wish to offer. And then obviously subject to  
2 later alteration for good cause and reasonable justification,  
3 I'll, I'll issue a scheduling order that's going to identify  
4 the group, and identify a date. And we'll do the best we can  
5 with that.

6 I think we have to do something along those lines,  
7 just to get off the dime here, so to speak. Get this discovery  
8 in your hands. Get it -- start the review process -- start,  
9 continue the review process. And move through the cold weather  
10 with you folks doing good work with your clients.

11 So beyond that, I don't have anything for you. I  
12 appreciate those things. We'll have a meeting though in  
13 August, 60 days hence, with liaison counsel.

14 Do you have a date, particularly?

15 THE CLERK: August 22nd at three.

16 THE COURT: 22nd of August at three p.m.

17 You'll get a notice of that also, electronically,  
18 Counsel.

19 And anybody else have anything? Yes, sir? Mister?

20 MR. MACHASIC: Your Honor, Ryan Machasic on behalf of  
21 --

22 THE COURT: Mr. Machasic, yes, sir.

23 MR. MACHASIC: Yes, sir. In the Government's  
24 memorandum, could they also include the anticipated times after  
25 the first group is tried, that they would anticipate then

1     trying the second, third and fourth groups so we can advise our  
2     clients who are sitting in detention when they might expect a  
3     trial date based on that memorandum?

4             THE COURT:   Some of that is going to be my decision,  
5     you realize, in terms of putting all of the space between  
6     succession of trials.   But we could, we could ask for an  
7     estimate at least, or a suggested suggestion for -- suggested  
8     schedule through that succeeding number of months or whatever  
9     may be before you.

10            I invite you to take up Mr. Machasic's idea, if you'd  
11     like to comment upon it in a few weeks.

12            So approximately two weeks from now, maybe Friday, two  
13     weeks hence would be good, if you can manage that.

14            MS. MOHSIN:   Judge, I only foresee that with the  
15     number of attorneys and the need to communicate not just with  
16     liaison counsel, it may take a little longer.   I also have an  
17     intervening trial.   So if I could have a little bit longer, I'd  
18     appreciate that.

19            THE COURT:   That's fine.

20            MS. MOHSIN:   Okay.

21            THE COURT:   That's fine.   Do you want to target three  
22     weeks, for example?

23            MS. MOHSIN:   That would be helpful, your Honor, maybe  
24     during the week of July 8th, if that's, in fact, three weeks.  
25     I'm not sure.

1 THE COURT: That would be fine.

2 And I would -- I'm not sure exactly what I need to  
3 enter in terms of speedy -- recognition of speedy trial. This  
4 is a complex case; it's been certified in that regard. I'm not  
5 -- what should the Court enter or what must the Court enter in  
6 terms of an order continuing and extending based upon what's  
7 already been entered as far as you're concerned, Ms. Mohsin?

8 MS. MOHSIN: Your Honor, I would, I would suggest an  
9 order that tracks the language of the Court's two prior orders  
10 regarding the complex case provision of the Speedy Trial Act,  
11 and really the scheduling order with the trial date for that  
12 period of time so that we don't have to enter further orders  
13 until that trial date.

14 THE COURT: Okay. I will look at that, at your  
15 suggestion.

16 MS. MOHSIN: I can also --

17 THE COURT: And enter an order based upon my  
18 understanding of the progress of discovery here and the  
19 consultation that's necessary.

20 MS. MOHSIN: In previous -- we had done this, the  
21 complex case thing. If the Court wants me to file a motion  
22 again, I can do that again. I had previously filed two motions  
23 for it.

24 THE COURT: I'm taking that as a verbal motion.

25 MS. MOHSIN: Okay.

1 THE COURT: Here and now. And I'll find a way of  
2 docketing that and, and then act upon it accordingly.

3 Does anybody else have anything else for discussion  
4 that we haven't covered?

5 I see nothing else. Thank you.

6 Thank you, Ms. Greenwood. That's all.

7 MS. MOHSIN: Thank you, your Honor.

8 MS. STOUT: Thank you.

9 MS. GREENWOOD: Thank you.

10 (Proceedings adjourned at 3:45 p.m.)

11 \* \* \*

12  
13 **CERTIFICATE OF REPORTER**

14  
15 As an official court reporter for the United States  
16 District Court, appointed pursuant to provisions of Title 28,  
17 United States Code, Section 753, I do hereby certify that the  
18 foregoing is a correct transcript of the proceedings in the  
19 above-entitled cause on the date hereinbefore set forth.

20  
21  
22 s/ Christin E. Russell

23 CHRISTIN E. RUSSELL, RMR, CRR, FCRR, CSR

24 Federal Official Court Reporter  
25